statement of Justice Breyer, rather than on Section 251, the goals of the Act, or the Supreme Court's decision, U S West brazenly submitted that differences in cost and economies of scale, and delays in self-provisioning were of limited or no relevance to the impairment inquiry.[67] Ameritech also argued that economies of scale are not a significant factor to be considered[68] and BellSouth argued that in comparing costs TELRIC-based UNE prices should not be considered.[69] Obviously, these baseless contentions are the type of sheer nonsense which exemplifies the ILECs' willingness to say or do virtually anything to avoid unbundling obligations. There is no rational way the Commission can examine the substitutability of non-ILEC network elements for ILEC UNEs without considering cost, economies of scale, and provisioning delay differentials associated with those alternatives. Moreover, neither the statute nor the Supreme Court's decision provide any basis for excluding such criteria. Indeed, the Supreme Court's decision acknowledges that cost and quality are appropriate factors to consider – the Court merely questioned the way in which the Commission considered them.[70] Finally, the fact that even SBC acknowledges that ubiquity, time-to-market, quality, functionality, and TELRIC cost comparisons must be made in applying Section 251(d)(2) suggests that the factor-limiting contentions of U S West, Ameritech, and BellSouth are nothing short of absurd.[71]

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67 U S West Comments at 15-23.

68 Ameritech Comments at 62-63.

69 BellSouth Comments at 11-12.

70 *AT&T,* 119 S.Ct. at 735.

71 *See* SBC Comments at 20.

III. RATIONAL APPLICATION OF THE SECTION 251(D)(2) STANDARDS DOES NOT YIELD THE RESULTS SUGGESTED BY THE ILECS

As ALTS explained in its initial comments, any well reasoned application of the Section 251(d)(2) unbundling standards compels the continued unbundling of loops, NIDs, transport, signaling/call-related data bases, OSS and several new UNEs, including the extended link, intraMTE wiring, multiplexing, and advanced services data UNEs.[72] In turn, the ILECs launched a full-scale assault on the Commission's national list conceding little more than that, in most cases, loops, transport and OSS still needed to be unbundled on a national basis. In reaching these conclusions, the ILECs largely did not attempt to apply the Section 251(d)(2) unbundling standards in a rational manner, but instead relied on a set of predetermined results designed to scrap UNEs in places where competitors actually have begun to use or have requested to use them.

Even in dense metropolitan business districts, however, consumers have not yet experienced the full measure of benefits that should be expected from local competition. The Commission should not prematurely pull the rug out from under competitors in those markets where local entry is most feasible. The current pace, scope and scale of local competition suggests that ILEC litigation, deviations from the Commission's pricing guidelines, and ILEC OSS and other provisioning failures significantly have limited competitive entry and the consumer welfare benefits that should be made possible by replacing a monopoly paradigm with a competitive one. Nevertheless, patience, resolve, and effective enforcement should prevail. The current framework for local competition is working. The Commission should not dramatically alter its course mid-stream. Instead it

should reaffirm its national unbundling framework, enforce its rules and require prompt compliance with the Act.

As ALTS discusses below, the ILECs' near total elimination of the Commission's national list cannot withstand scrutiny. The ILECs' attempts to avoid additional unbundling obligations also are unfounded.

A. A National Loop Unbundling Requirement Is the Best Means of Enhancing the Pace, Scope and Scale of Local Competition

Nearly all commenters joined ALTS in recognizing the fundamental importance of retaining a national loop UNE – even the ILECs, with qualification, generally conceded that a nationwide loop unbundling requirement is compelled by the Act.[73] Nevertheless, ALTS strongly believes that the ILECs proposed limitations or exceptions

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72 ALTS Comments at 33-77.

73 *E.g.*, AT&T Comments at 59-62; Cable & Wireless Comments at 33-35; California PUC Comments at 4; Axessa Comments at 9-12, ; CompTel Comments at 31-35; Focal Comments at 6-7; Illinois CC Comments at 10-15; MCI WorldCom Comments at 39, 43-50; Net2000 Comments at 11; Nextlink Comments at 16-24; NorthPoint Comments at 13-14; Oregon PUC Comments at 2; Ohio PUC Comments at 15; Washington UTC Comments at 14; Winter Comments at 2-3; Competition Policy Institute Comments at 14; *see, e.g.*, Ameritech Comments at 6 (supports mandatory availability of local loops except in wire centers with 40,000 or more lines and in which alternative loops have been deployed), 100-102 (increasing competition suggests that access to ILEC loop facilities may not be necessary), 103-104 (fixed wireless local loops are offering a replacement for the last mile of copper, along with cellular and PCS functionalities); Bell Atlantic Comments at 39 (loop UNEs should not be required in any area where at least one carrier has deployed its own network and collocated its own transmission equipment in a Bell Atlantic office); GTE Comments at 95 (proposes rules providing unbundled loops for business customers only if fewer than 20 lines; for residential customers only if not (1) in MDU or (2) in a new residential development); SBC Comments at 23 (CLECs have available alternatives to ILEC loops to reach all large business customers in wire centers serving 40,000 or more access lines in which CLECs have collocated); U S West Comments at 38 (loops should be unbundled except for high capacity loops running directly to customer premises).

from the national loop unbundling requirement are unfounded and would have a profoundly detrimental impact on the pace, scope and scale of local competition. Local loop UNEs are a critical stepping stone to facilities-based entry in all markets, including the dense metropolitan areas in which the ILECs seek to eliminate their unbundling obligations. The Commission should dismiss ILEC contentions that there is enough competition in metropolitan areas today, and should allow competition to continue to develop – via all three entry methods – as intended.

1. The ILECs' Proposed Loop Unbundling Rules Are Based on Outcomes that Bear No Relation to the Statutory Standard or the Goals of the Act

It is no secret that competitive entry is most viable in urban and suburban areas with dense business and residential centers. Indeed, these are the areas where ALTS' members have invested heavily in network deployment and collocation. Through the use of their own facilities and UNEs, ALTS members have begun chipping away at the ILEC monopolies. The ILECs have not made it easy. They have erected one barrier after another and brazenly have refused to comply with the procompetitive provisions of the Act and the Commission's rules implementing those provisions. They derailed the Commission's pricing rules for more than two years. They unilaterally deny competitors' Section 252(i) rights. They refuse to unbundle as required. When they do not refuse, they often are unable to unbundle as required. Now, in this UNE Remand proceeding, the ILECs unabashedly ask the Commission to relieve them from competition that managed to prevail in spite of such obstruction. These shameless requests for relief come largely in the form of ILECs' proposals for wire center-based automatic loop and transport unbundling sunsets. The Commission should reject each of the ILEC proposals

outright, as they have no basis in the statute or in the Supreme Court's decision and are antithetical to the Act's goal of fully replacing monopolies with competition.

With respect to loops, ILECs made the following proposals – each of which is designed to eliminate loop UNEs where competitors are using or most likely will seek to use them in the near term:

- **Ameritech:** Unbundled loops should be made available *possibly except* in "dense" wire centers with 40,000 or more lines and in which alternative loop facilities have been deployed.[74]

- **Bell Atlantic:** Unbundled loops should be made available *except* for high capacity loops in any area where at least one carrier has deployed its own network and collocated its own transmission equipment in a Bell Atlantic end office.[75]

- **BellSouth:** Unbundled loops should be made available *except* for business loops (4-wire and high capacity loops) in urban and suburban ("big city" and "small city") rate zones and *except* in areas where cable telephony is offered.[76]

- **GTE:** Unbundled loops should be made available *except* for loops serving large business customers (those with 20 lines or more), MDUs, new residential or commercial developments.[77]

- **SBC:** Unbundled loops should be made available except for loops serving large business customers (those with 20 lines or more) in "dense" wire centers with 40,000 or more lines and in which one or more CLECs have collocated.[78]

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74 Ameritech Comments at 6, 100-06 (Ameritech asks for the exception in the introductory section of its comments, but, perhaps hoping to appear reasonable, backtracks from in its discussion of loop unbundling and concedes that, at this time, loops should remain on the national list without exception).

75 Bell Atlantic Comments at 39.

76 BellSouth Comments at 66-76.

77 GTE Comments at 63.

78 SBC Comments at 30.

> The Commission should adopt a *sunset* for unbundled loops that is effective once the incumbent cable operator begins offering telephony on TCP/IP protocols, or their equivalent.[79] The Commission should adopt a *sunset* for unbundled loops to small businesses and residences when the price of wireless service drops to the point that wireless is an economic substitute for wireline.[80]

- **U S West:** Mandatory unbundling of loops is justified on a national basis, *except* with respect to high capacity loops.[81]

Notably, not one of the proposed ILEC restrictions on the loop UNE can be squared with a rational interpretation of Section 251(d)(2).

Most of the restrictions operate on the ILEC-created "*any* potential substitute" standard which ALTS discredited above. For example, Ameritech asks the Commission to assume that loops will not meet the impairment standard if they are connected to dense wire centers (typically those in metropolitan areas) and if *any* CLEC has self-provisioned any loop facilities. What Ameritech fails to comprehend, however, is that the presence of alternative loop facilities – whether one or many – does not necessarily mean that reasonable substitutes are presently available so that requesting carriers' ability to compete will not be diminished in the absence of an unbundling requirement. Moreover, the fact that it is economic for one carrier to self-provision loops in some circumstances does not mean that "a requesting carrier" will not be "impaired" by removal of the loop unbundling requirement. The impair standard should not be applied on the basis of a single competitor's business plan. Rather, the Commission should apply the standard in a

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79 SBC Comments at 28.

80 SBC Comments at 29-30.

81 U S West Comments at 38.

way that protects the viability of a leased element entry plan for all existing and potential new entrants.

SBC asks the Commission to leap even further. SBC contends that the Commission should presume that loops cannot meet the impairment test in end offices where CLECs have collocated. This presumption is patently absurd. One of the main reasons CLECs collocate is so that they can use ILEC loop UNEs as a method of entry. CLEC collocation has absolutely no correlation to the presence of a wholesale network element market for loops.

Bell Atlantic asks the Commission to make the same impossible intellectual leap that SBC does, however, with the limitation that only high capacity loops would be exempted.[82] BellSouth, GTE and U S West also ask for the Commission to carve high capacity loops out from its loop unbundling requirement. These requests, however, are grossly premature. A wholesale high capacity loop market has yet to develop. Moreover, the advantages of incumbency are not limited to two-wire analog loops. Non-ILEC providers remain at a distinct disadvantage in terms of ubiquity, economies of scale/cost, and time-to-market factors. For the same reasons, the Commission also must

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82 Bell Atlantic's assertion that CLECs are connecting large customers to their networks without ILEC loops and that CLEC loops reach into nearly 15 percent of all commercial office buildings in the country actually is an indication that loops – even in those areas where competition has developed most rapidly – still qualify for unbundling under the impair test. Without disputing any of the figures the ILECs use to depict the *potential* reach of CLECs, it is safe to say that ILECs retain monopoly control over local telecommunications markets and the transition from monopoly to competition is merely in its nascent stages. A monopolist that has lost three percent of its market share – or has the potential to lose much more – is still a monopolist. A cat should not be let out of the ring before it is tamed.

reject GTE's bid to have loops servicing MDUs and new construction removed from the loop unbundling requirement.

In sum, each of the ILECs' self-effectuating unbundling sunsets[83] – including those related to cable and wireless alternatives – bear little relation to the analysis required by the statute. For example, it is difficult to conceive how an anticipated AT&T launch of cable telephony services could upend the UNE entry plans of all other competitors. Yet, BellSouth and SBC suggest that loops should be removed from the national list the moment that happens. If Congress intended for the Section 251 unbundling provisions to sunset, it would have said so. In fact, in limiting the Commission's Section 10 forbearance authority, Congress made certain these provisions would not "sunset" before they were completely implemented.

2. Commenters Agree that Loops Must Include Cross-Connects

The record contains significant support for ALTS' position that the loop must be defined to include cross-connects.[84] The Competition Policy Institute astutely recognized the need for Commission action on this issue noting that disputes regularly arise over whether an ILEC or a CLEC must provision cross-connects which are:

> needed in order to connect the loops [to the] main distribution frame to other cross-connect points . . . [and are] . . . necessary to enable a CLEC to access other ILEC

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83 *See* SBC Comments at 23 (SBC characterizes its proposed exceptions as automatic sunsets).

84 *E.g.,* MCI WorldCom Comments at 45 (proposed loop definition includes "whatever cross connections are needed to join the loop to the next network element"); MGC Comments at 2, 10, 17-19; Net2000 Comments at 11; Nextlink Comments at 20; Competition Policy Institute Comments at 15-16.

> unbundled network elements, or its own or third party collocation sites.[85]

Nextlink confirmed that "[d]espite the Commission's clear directive in the *First Local Competition Order* that cross-connects must be provided to CLECs to access the loop, ILECs have not always provided cross-connects as needed or at a cost-based rate that allows use of the requested loop" and that, as a result, it has expended unnecessary time and expense litigating ILECs' obligation to provide cross-connect facilities as part of the unbundled loop."[86] MGC reported that GTE charges a separate non-TELRIC-based rate for cross-connects.[87] Thus, the comments clearly demonstrate that Commission action is necessary to put an end to such unproductive disputes and to condemn the anticompetitive practice of inserting non-cost-based rated into competitors' use of UNEs.

3. Commenters Agree that Loops Must Include a CLEC-Designated Interconnection Point

The comments also demonstrate broad support in the competitive community for amending the Commission's existing loop definition to include a CLEC-designated interconnection point.[88] As ALTS explained in its initial comments, the loop definition must be modified so that it provides for interconnection of the loop at a point where requesting carriers can connect it to other ILEC network elements and/or to their own facilities or equipment in a manner that does not impair CLECs' ability to provide service. AT&T and CompTel both affirmed ALTS' contention that this change is

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85 Competition Policy Institute Comments at 15.

86 Nextlink Comments at 20.

87 MGC Comments at 18.

88 *E.g.*, AT&T Comments at 88-89; CompTel Comments at 31-35.

necessary to ensure requesting carriers the flexibility to deploy new technologies and advanced services and to facilitate access to ILEC-provisioned combinations and to efficiently connect ILEC-provisioned elements with CLEC networks.[89]

4. Unbundling of Clean Copper or "Conditioned" Loops Is Essential to the Deployment of Advanced Services

With regard to "clean copper" or "conditioned" loops, the comments confirm what the Commission long has recognized: loop conditioning is essential to the widespread deployment of advanced services.[90] The ILECs' comments, however, indicate that the Commission must provide explicit guidance in order to ensure that its conditioning requirement is implemented in a manner that allows competitors to provide advanced services. First, the Commission explicitly must reject GTE and SBC's arguments that the Act does not authorize the Commission to require ILECs to condition loops that they have not yet conditioned for themselves.[91] GTE and SBC's reliance on the Eighth Circuit's rejection of the Commission's "superior quality" rules is misplaced. Loop conditioning is not a superior quality issue. Rather, as AT&T explained in its initial comments, the Eighth Circuit actually affirmed the Commission's authority to

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89 *See id.*

90 *Local Competition First Report and Order*, ¶ 382; *Advanced Services Order*, ¶ 104; *see, e.g.*, Covad Comments at 37-38; Level 3 Comments at 18-19; KMC Telecom Comments at 19.

91 GTE Comments at 86-87 (arguing that the Commission could only require conditioning in central offices where the ILEC is conditioning loops for itself); SBC Comments at 77-80 (arguing that ILECs should be entitled to compensation in excess of TELRIC for conditioning loops they have not yet conditioned for themselves).

require "modification" of an existing network element, as is involved with loop conditioning.[92]

Some ILECs, however, already acknowledge the Commission's right to lawfully impose a loop conditioning obligation.[93] Thus, loop conditioning may simply be a pricing issue. Indeed BellSouth's vague reference to a "fee" and SBC's reference to "fair compensation" suggest that explicit guidance is needed here, too.[94] As ALTS explained in its initial comments, the Commission should establish a presumption against the imposition of charges on CLECs for conditioning, either as recurring or nonrecurring charges.[95] Under the Commission's TELRIC pricing standards, ILEC loop rates must be set on a forward-looking basis, assuming the deployment of the most efficient available technologies. The assumption that analog circuits will be deployed simply has no place in a forward looking cost study. The Commission should therefore require that loop conditioning costs be excluded from TELRIC-based loop rates. If the Commission nevertheless finds that ILECs may recover conditioning costs in a charge over and above

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92 AT&T Comments at 76 (citing *Iowa Utils. Bd. v. FCC,* 120 F.3d at 813, n.33).

93 *See* BellSouth Comments at 36 ("BellSouth will condition loops for CLECs in a nondiscriminatory manner for a fee. In fact, under the Commission's rules, incumbents must 'take affirmative steps to condition existing loop facilities to enable' CLEC provision of xDSL service."); *see also* AT&T Comments at 75 ("In the *706 NPRM*, no RBOC disputed its obligation to make xDSL capable loops available to new entrants as an unbundled network element under Section 251(c)(3). [(citation omitted)]"), 76 ("Ameritech has conceded that an incumbent is required to make reasonable modifications to its existing facilities, such as conditioning, to the extent necessary to accommodate interconnection or access to network elements. [(citation omitted)]").

94 BellSouth Comments at 36; SBC Comments at 80.

95 ALTS Comments at 94; *see also* Covad Comments at 41-43.

the TELRIC-based loop rate loop rates, the Commission, at a minimum, should find that ILECs may only recover such costs through a one-time *nonrecurring* charge.

5. All Types of Loops, Including High Capacity and Dark Fiber Loops, Must Be Unbundled

The record contains substantial support for mandatory unbundling of high capacity and dark fiber loops.[96] Above, in ALTS' discussion of the various exceptions to loop unbundling proposed by the ILECs, ALTS already dismissed most ILEC arguments against unbundling high capacity loops. In its initial comments, ALTS anticipated and discredited the ILECs' "dark fiber is not a network element" arguments.[97]

However, at least one additional point remains to be addressed. That is, U S West's contention that high capacity and dark fiber loops should not be unbundled because CLECs can obtain the same functionality by ordering Special Access and Private Line services.[98] As ALTS noted in its initial comments, ILEC attempts to limit access to high capacity and dark fiber loops and to force CLECs instead to order highly-priced special access offerings must be rejected as they are inconsistent with the pro-competitive goals of the Act, the unbundling standards of Section 251, and the advanced services mandate of Section 706.[99]

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96 *E.g.,* Choice One/Network Plus/GST/CTSI/Hyperion Comments at 25-26; KMC Comments at 20-21; Net2000 Comments at 11; Nextlink Comments at 23; RCN Comments at 24.; Illinois CC Comments at 15 (dark fiber); Texas PUC Comments at 16-18 (dark fiber).

97 ALTS Comments at 43, 55-56; *but see* SBC Comments at 30, 51-55; BellSouth Comments at 54-55, n.56; GTE Comments at 80-81.

98 U S West Comments at 39.

99 ALTS Comments at 42.

6. The Comments Underscore the Fact that the Commission Must Adopt Specific Unbundling Rules for IDLC-Deployed Loops

Repeating past experience in the *Advanced Services* proceeding, the ILECs generally did not offer solutions for problems associated with the provisioning of xDSL and other advanced services on IDLC-delivered loops. For example, SBC merely indicated that it hopes to deny competitors unbundled access to DS1s that pass through remotes onto fiber.[100] This, however, cannot be squared with either Section 251 or 706. Indeed, the comments of multiple parties confirm that the Commission needs to address this issue as soon as possible.[101] To properly address the IDLC problem, the Commission, at a minimum, should require ILECs to provide unbundled access to (1) alternative or "spare" copper that is equal in quality, or (2) the IDLC-provisioned loop-equivalent with intra-loop electronics incorporated.[102] As NorthPoint suggests, the Commission also should require DSLAM unbundling where remote terminal collocation (or for that matter, end office collocation) is not available.[103] Additionally, as Covad suggests, the Commission should adopt rules requiring the deployment of next-generation RTs and DSLAMs designed to support the xDSL services of multiple providers.[104]

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100 See SBC Comments at 31-32. Indeed, it appears that SBC hopes to avoid unbundling *any* fiber loop components. SBC Comments at 30. Of course, SBC's proposal to limit loops to copper facilities cannot be squared with the Act.

101 *E.g.,* Covad Comments at 39-41; Nextlink Comments at 24-30; NorthPoint Comments at 16-19; AT&T Comments at 77-82; MCI WorldCom Comments at 50.

102 ALTS Comments at 45-46.

103 NorthPoint Comments at 18-19.

104 Covad Comments at 39-41.

7. The Commission Should Require Subloop Unbundling

The record demonstrates substantial support for requiring subloop unbundling.[105] As the Texas PUC explained, subloop unbundling encourages competitive facilities deployment.[106] As CoreComm and RCN explain, subloop unbundling can give competitors critical flexibility necessary to provide certain advanced services to residential consumers.[107]

GTE and SBC, however contend that subloop unbundling is unnecessary, does not meet the impair standard, or raises technical and network integrity issues.[108] None of these arguments are compelling. First, if subloop unbundling was unnecessary it is highly unlikely that numerous state commissions, including the Florida, Georgia, Hawaii, Oregon, Tennessee, Texas and Washington commissions, would have required various forms of subloop unbundling, as they have. Second, as ALTS indicated in its initial comments, if loops meet the impair standard, subloop elements must also meet the impair standard (both do).[109] Finally, GTE and SBC's vague assertions about technical and network integrity issues likely are overstated, and, in any event, can be addressed by adopting appropriate security measures.

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105 *E.g.,* Choice One/Network Plus/GST/CTSI/Hyperion Comments at 21-22; CoreComm Comments at 33-35; Illinois CC Comments at 14-15; Level 3 Comments at 17-18; McLeod Comments at 6; MGC Comments at 2; Nextlink Comments at 30; NorthPoint Comments at 16-18; Texas PUC Comments at 15-16; Washington UTC Comments at 17; KMC Comments at 19-20.

106 Texas PUC Comments at 15 (typographical error reads "ILEC" instead of "CLEC").

107 CoreComm Comments at 34; RCN Comments at 22-23.

108 GTE Comments at 87-89; SBC Comments at 30-31.

109 ALTS Comments at 48; *see also, e.g.,* e.spire/Intermedia Comments at 23; RCN Comments at 23.

B. The NID Must Remain Available as Part of the Loop and as a Separate UNE

Although there is a broad consensus among commenters that NIDs must be provisioned as part of a loop UNE (unless a CLEC requests that it be removed),[110] several ILECs suggest that the NID no longer qualifies for unbundling separately.[111] ALTS and numerous other commenters disagree.[112] As Nextlink explains, although self-provisioning is possible, it often is not economically viable due building access complications, including landlord refusal to grant access and space constraints.[113] AT&T aptly notes, as the Commission did three years ago, that a separate NID element also facilitates the deployment of competitive loop facilities.[114] Moreover, as is the case with loops, CLECs cannot begin to approximate the scope and scale that results from the ubiquity of ILEC NID plant.[115] Accordingly, the Commission must reject the ILECs' contention that the NID should be eliminated as a separate UNE.

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110 *E.g.,* ALTS Comments at 48; CompTel Comments at 35-36; AT&T Comments at 84; U S West Comments at 40-41.

111 GTE Comments at 39, 56; SBC Comments at 33; U S West Comments at 40-41.

112 *E.g.,* AT&T Comments at 83-84; Cable & Wireless Comments at 33-35; CompTel Comments at 35-36; e.spire/Intermedia Comments at 23-24; MGC Communications Comments at 2-3, 9, 20; Net2000 Comments at 12; Nextlink Comments at 37-38; KMC Comments at 18.

113 Nextlink Comments at 37-38.

114 AT&T Comments at 83-84 (citing *Local Competition First Report and Order,* ¶¶ 392-93).

115 Nextlink Comments at 38.

C. A National Transport Unbundling Requirement Is the Best Means of Enhancing the Pace, Scope and Scale of Local Competition

With regard to dedicated interoffice transport, the ILECs, as they have done with unbundled loops, offered results designed to scrap transport UNEs in places where competitors actually have begun to use them, have tried to use them, or are most likely to use them in the near term. As ALTS demonstrated with regard to loops and now demonstrates once again with regard to dedicated transport, the ILECs' proposed automatic UNE sunsets simply cannot be squared with Section 251(d)(2) or the broader purposes of the Act. In contrast to the ILECs, competitors of all types and sizes demonstrated not only that dedicated transport satisfies Section 251(d)(2)'s "impair" test, but also that the transport UNE will become increasingly important as CLECs increase their market penetration through collocation in more and more ILEC end offices.[116]

1. The ILECs' Proposed Transport Sunset Rules Bear No Relation to the Statutory Standard

As is the case for unbundled loops, the ILECs, with regard to unbundled transport offered the following proposals – none of which can be characterized as a rational explanation of how transport cannot be said to meet the unbundling standards of Section 251(d)(2):

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116 *E.g.*, AT&T Comments at 111-112 (dedicated transport is not generally available outside of ILECs); MGC Comments at 2-3, 9-10, 21-24; Network Access Solutions Comments at 14-22; Nextlink Comments at 31-35; NorthPoint Comments at 19-20; e.spire/Intermedia Comments at 24-25; Competition Policy Institute Comments at 22-27 (even the ILECs supports unbundling of ILEC interoffice transmission facilities, cites Ameritech); Covad Comments at 43-49; CompTel Comments at 41-43; RCN Comments at 17; KMC Comments at 18; MCI WorldCom Comments at 62, 64.

- **SBC/U S West:** Interoffice transport should not be required to be unbundled in any wire center serving 40,000 or more lines with existing collocation.[117]

- **Ameritech:** Interoffice transport should not be required to be unbundled (1) in any wire center serving 40,000 or more lines with existing collocation *or* (2) in any central office with collocation if competitive interoffice transmission facilities have actually been deployed in the wire center.[118]

- **Bell Atlantic:** At a minimum, FCC should not require transport UNEs in any are where at least one carrier has deployed its own network and has collocated with Bell Atlantic.[119]

- **BellSouth:** Where non-ILEC transport facilities are present, CLECs can't meet showing under necessary and impair. In BellSouth Zone 1 areas, there are at least 3 competitive transport providers, so UNEs should not be required. In Zone 2, there are fewer wireline carriers, but wireless options are available, and there are no barriers to entry, so UNEs should be eliminated here as well. In Zone 3, transport unbundling is a question of fact, to be determined on case-by-case basis where UNEs are required.[120]

- **GTE:** The Commission should establish a threshold that allows unbundling only in ILEC wire centers too small to support competitive alternatives – GTE recommends a 15,000 access line for such a central office. Transport in these markets should not be subject to unbundling.[121]

Once again, the ILECs demonstrated little or no self-restraint and offered sunset provisions that bear no meaningful relation to the statutory unbundling standard.

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117 SBC Comments at 45-51; U S West at 51 (U S West signs on to the 40,000 line mark drawn by SBC/Ameritech, although it would prefer a 20,000 line cutoff).

118 Ameritech Comments at 6, 86-94.

119 Bell Atlantic Comments at 31.

120 BellSouth Comments at 53-54.

121 GTE Comments at 59.

As with the loops, the ILECs' proposed sunsets are premised on an "any potential substitute" standard. SBC, U S West and Ameritech each rely on the ill-conceived notion that CLECs collocating in dense metropolitan central offices come there with transport facilities in place or with reasonable substitutes available from a third party. This simply is not the case. In fact, collocating CLECs are very likely to rely on ILEC transport UNEs, at least until traffic volumes justify self-provisioning and until capital funding, engineering, contracting, and franchise issues associated with self-provisioning are settled. Again, however, the ILECs utterly miss the point that CLECs most often collocate to use UNEs (a method of entry mandated by the Act) – not because they no longer need them.

Going a step further into the realm of absurdity, Ameritech and Bell Atlantic suggest that transport UNEs should disappear if there are any non-ILEC transport facilities deployed anywhere in the area of the serving wire center. In other words, if AT&T, Qwest, MFN or perhaps even an electric utility happened to have a transport link running through a serving wire center service area, Ameritech and Bell Atlantic submit that the Commission should assume that competitors no longer have a need for unbundled access to their own ubiquitous transport networks. Applied in a different context, this rationale would suggest that if a single car was parked outside a jam-packed 40,000 seat baseball stadium, it should be presumed that everyone has a ride home (or at least could buy a car and then drive themselves home). Obviously, the Ameritech and Bell Atlantic proposals defy logic.

Heading over the cliffs of insanity and deeper still into the realm of the absurd, BellSouth and GTE essentially ask the Commission to presume at this point in time that

access to their ubiquitous transport networks is only necessary in sparsely populated areas served by small serving wire centers or rural areas. In support of this proposition GTE appears to invoke a "well they aren't using it anyway" argument that deserves exploration, if not a formal investigation. Indeed, GTE reports that only one CLEC is using unbundled transport in only one of 141 wire centers with operational collocation.[122] ALTS members had no difficulty explaining this incredible statistic. First, GTE refuses to provision "entrance facilities" between its end offices and that of a requesting carrier. An entrance facility is the first form of transport a collocating facilities-based CLEC is likely to need. Moreover, the Commission made explicitly clear in its *Local Competition First Report and Order* that such facilities are included in the ILECs' obligation to unbundle interoffice facilities. Thus, due to GTE's corporate policy decision to flout the Commission and ignore the law, CLECs have been forced to order high-priced, tariffed special access links instead of entrance facilities. Notably, ALTS' members also report that timing issues and customer demand often force them to use the well established special access "ASR" process rather than GTE's dysfunctional "LSR" process for UNEs (customers will not wait for GTE to say yes – or for GTE to be forced to say yes – to a transport UNE request).

ALTS' members also explained that competition is only beginning to develop to a point where there will be substantial demand for transport UNEs other than entrance facilities. As CLECs continue to collocate in additional ILEC end offices (a process that

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122 GTE Comments at 59 (only one CLEC has requested unbundled transport in 141 GTE wire centers with operational collocation). SBC shares a similar success story: CLECs have obtained collocation in 330 wire centers, but are taking interoffice transport in only 37. SBC Comments at 46.

will be accelerated, as a result of the Commission's *Advanced Services Collocation Order*), the need for ILEC transport to connect CLEC equipment collocated in multiple ILEC end offices will grow considerably. Moreover, now that the Supreme Court has affirmed Rule 315(b) – and the ILECs' obligation to provide UNE combinations – ILEC transport UNEs will play an ever increasing role in accelerating the pace and broadening the reach of local competition.

Thus, GTE's incredible one in 141 statistic does not suggest that transport no longer meets the unbundling standards of Section 251(d)(2). Rather, it demonstrates just how successful GTE has been in its efforts to derail and obstruct competitive entry. The cure for this problem is simple. Either voluntarily or via Commission enforcement, GTE must begin complying with its obligations to provide unbundled transport as an entrance facility and in combinations.

At bottom, despite the ILECs' requests to the contrary, the Commission cannot rationally conclude that, because it is economic for one carrier to self-provision transport in some circumstances, and there may in some other circumstances be non-ILEC wholesale transport alternatives, a "requesting carrier" will not be "impaired" by removal of the transport unbundling requirement. The impair standard should not be applied on the basis of a single competitor or carrier's business plan. Rather, the Commission should apply the standard in a way that protects the viability of a leased element entry plan for all existing and potential new entrants. A wholesale market for dedicated transport shows signs of developing in certain areas and in certain segments. However, a wholesale network element market has not yet sufficiently developed in any geographic area or transport segment.

2. The Commission Must Require ILECs to Unbundle High Capacity and Dark Fiber Transport

The record demonstrates that, for the same reasons ILECs should be required to unbundle high capacity and dark fiber loops, ILECs also should be required to unbundle high capacity and dark fiber transport.[123] With respect to dark fiber transport in particular, however, ALTS notes that ILEC contentions that dark fiber is a "commodity" and that there is a wholesale market for dark fiber are inaccurate.[124] If the ILECs' contentions were true and, in fact, a wholesale market for dark fiber developed to the point that dark fiber is a commodity, then it likely would not be the case that competitors, in this proceeding, would be requesting the Commission to require unbundled access to dark fiber. Moreover, if dark fiber was in fact a commodity, then it would be in the ILECs' interest to sell dark fiber at TELRIC-based prices. The fact of the matter is, however, that non-ILEC dark fiber facilities simply have not begun to approximate the ubiquity of the ILECs' own interoffice transport networks. At this point in time, only the ILECs have fiber deployed in many of the places competitors need to go. This being the case, unbundling of dark fiber should be required pursuant to Section 251(d)(2).

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123 *E.g.,* Cable & Wireless Comments at 37-38; Allegiance Comments at 21-22; MCI WorldCom Comments at 67; *but see, e.g.,* SBC Comments at 51-55 ("transport" should not include dark fiber); U S West Comments at 2-3 (dark fiber should not be included as sub-element of "transport"); BellSouth Comments at 54-55, n.56.; GTE Comments at 80.

124 *E.g.,* GTE Comments at 82; U S West Comments at 54.

D. The Signaling and Call-Related Data Bases UNE Remains an Essential Component of Effective Interconnection and Must Be Unbundled Under the "Impair" Standard

The record demonstrates that the signaling/call-related databases UNE remains critical to effective interconnection and meets the unbundling standards of Section 251(d)(2).[125] Premature removal of this UNE seriously could disrupt competition – and end user service. Despite the contentions of BellSouth and others, a fully developed wholesale market for signaling/call-related databases does not yet exist.[126] Alternative providers of signaling, for example, do not offer the reliability or ubiquity of the ILECs' SS7 networks. ALTS members report that alternative national SS7 providers have relatively few STPs. As a result, failures – which are more frequent -- tend to bring down most, if not all of the alternative signaling network. Moreover, alternative national signaling providers generally cannot guaranty physical route diversity. Thus, the Commission should continue to require unbundling, as under the Section 251(d)(2)'s "impair" standard for unbundling, quality, ubiquity and diversity factors all indicate that the absence of a signaling/call-related databases UNE would diminish materially a requesting carrier's ability to compete. Having demonstrated that the signaling/call-

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125 *E.g.,* Cable & Wireless Comments at 37-38; MCI WorldCom Comments at 58, 60-62; NorthPoint Comments at 4-5; Competitive Policy Institute Comments at 27-29; Qwest Comments at 81-84; Cox Comments at 34-36; Nextlink Comments at 38; *but see, e.g.,* Ameritech Comments at 6 (signaling networks should not require unbundling in any market in which switching is not required to be provided on an unbundled basis; call related databases should not be unbundled in any geographic market), 113-115 (many CLECs have deployed their own signaling networks or use competitive wholesalers); BellSouth Comments at 76; SBC Communications Comments at 43 (to the extent CLECs provide their own switching from a non-ILEC, CLECs do not need unbundled signaling capability from ILECs), 44 (CLECs do not need access to SBC's Line Information databases at TELRIC prices).

related databases UNE meets the statutory test for unbundling, ALTS submits that the Commission must reject ILEC efforts to tie the availability of this UNE to the availability of a switching UNE. There is no rational justification for the ILECs' position. CLECs that deploy their own switches do not necessarily deploy their own signaling networks. In fact, most ALTS members who have deployed switches rely on ILEC UNEs or alternative vendors for SS7 signaling.[127] For these reasons, the signaling/call-related databases UNE must remain available separately. Moreover, premature removal of the signaling/call-related databases UNE would delay the development of a fully competitive signaling market by removing quality, ubiquity and pricing checks that currently are driving the development of alternative signaling products by non-ILEC vendors.

E. The OSS UNE Remains Essential Not Only to the Use of ILEC UNEs and Resale Services, but also with Respect to Presenting Consumers with Competitive Options

With regard to OSS, virtually all commenters agree: OSS meets the unbundling standards of Section 251(d)(2).[128] However, the ILECs, once again demonstrating a

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126 BellSouth Comments at 76; *see also, e.g.,* GTE Comments at 54-56.

127 Ameritech Comments at 6, 113-15; SBC Comments at 43.

128 *E.g.,* Focal Comments at 8; AT&T Comments at 134-35; California PUC Comments at 5-6; CompTel Comments at 43-46; e.spire/Intermedia Comments at 20; Florida PSC Comments at 7; Illinois CC Comments at 4-7; Level 3 Comments at 21; MCI WorldCom Comments at 67-70; McLeod Comments at 5-7; MGC Comments at 9, 27-28; Net2000 Comments at 16; Network Access Solutions Comments at 14-22; Nextlink Comments at 39-40; NorthPoint Comments at 13, 20; Qwest Comments at 84; Washington UTC Comments at 14; Competition Policy Institute Comments at 29-30; Covad Comments at 53, 54; KMC Comments at 19-20; e.spire/Intermedia Comments at 21-22; *but see, e.g.,* SBC Comments at 56-57 (ILECs do not need to provide OSS functions to a CLEC to enable that CLEC to obtain a facility or service from a non-ILEC source); GTE Comments at 71 (the "impair" test justifies affording CLECs access to ILEC OSS only when CLECs are reselling ILEC service or purchasing unbundled ILEC

remarkable lack of restraint, ask the Commission to add conditions that significantly will diminish the usefulness of a UNE. The Commission should reject the OSS unbundling conditions suggested by SBC, GTE and U S West, as they have no legal, policy or practical basis.

For example, SBC states that it:

> agrees that CLECs can make a sufficient showing of need under section 251(d)(2) to justify a Commission determination that ILECs must provide access to OSS functions when a CLEC takes a required network element, required interconnection offering, or required resold service from an ILEC. ILECs do not, however, need to provide OSS functions to a CLEC to enable that CLEC to obtain a facility or service from a non-ILEC source.[129]

CLEC access to ILEC OSS should not be dependent on a CLEC "taking" another UNE, required interconnection or resale service. CLECs need access to ILEC OSS for pre-ordering purposes and line qualification purposes that may not result in a CLECs' taking ILEC UNEs or resale services. Denying such access would deny consumers the ability to evaluate and choose competitive alternatives to their monopoly provider. ILECs also should not be able to restrict CLECs' use of OSS or other UNEs, in the second way proposed by SBC. If a CLEC wishes to use ILEC OSS to connect another ILEC UNE to its own facilities or those of an alternative vendor, it would seem that facilities-based competition is developing just the way that Congress intended. The Commission should

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elements); U S West Comments at 41 (ILECs should only be required to provide unbundled OSS access to network elements that meet the necessary and impair tests and to services resold to CLECs).

129 SBC at 56; *see also* GTE Comments at 71 (the "impair" test justifies affording CLECs access to ILEC OSS only when CLECs are reselling ILEC service or purchasing unbundled ILEC elements); U S West Comments at 41.

reject this latest attempt by SBC and others to erect yet another barrier to facilities and UNE-based competition.

F. The Commission Should Define an Extended Link UNE or Require that Equivalent Functionality Be Provided in a UNE Combination

Building on the record compiled in the *Advance Services* proceeding, the comments demonstrate substantial support for Commission definition of a distinct extended link UNE, and for Commission affirmation and identification of equivalent functionality that must be provided as a UNE combination.[130] Indeed, ALTS already has demonstrated that the extended link qualifies for unbundling under the Section 251(d)(2) "impair" test (regardless of whether or not an ILEC end office has reached space exhaust).[131] In addition, the fact that ILECs regularly use extended links to deliver traffic to their own data switches and, as GTE observes,[132] combine the same network elements to provide special access and intraLATA private line services, demonstrates that the extended link also must be made available as a combination under newly reinstated Rule 315(b).

In this regard, ALTS also concurs in e.spire and Intermedia's assertion that "[t]he Commission is fully empowered to require ILECs to provide UNE combinations."[133] As the Supreme Court noted, Section 251(c)(3) "does not say, or even remotely imply, that

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130 *E.g.*, e.spire/Intermedia Comments at 11-13; AT&T Comments at 136-137; Cable & Wireless Comments at 40-44; California PUC Comments at 6; Choice One/Network Plus/GST Telecom/CTSI/Hyperion Comments at 27-35; Axessa Comments at 9, 11; CompTel Comments at 47-48, 50-52; CoreComm Comments at 53; Level 3 Comments at 24-25; McLeod Comments at 8-9; Net2000 Comments at 17-18, 19; Nextlink Comments at 24-30.

131 ALTS Comments at 62-67.

132 GTE Comments at 85.

133 e.spire/Intermedia Comments at 8.

elements must be provided [in discrete pieces] and never in combined form."[134] Indeed, in the *FNPRM*, the Commission correctly noted that "[t]he ability of requesting carriers to use combinations of network elements is integral to achieving Congress' objective of promoting rapid competition in the local telecommunications market."[135]

Thus, ALTS urges the Commission to affirm that the ILECs' Section 251(c)(3) unbundling obligation includes an obligation to provision UNEs separately or in combination. To facilitate the use of such combinations, ALTS also urges the Commission to identify, and provide as examples, specific network element combinations – such as loops-multiplexing/aggregation/routing-transport, and others suggested in ALTS' initial UNE Remand comments – that are included in the ILECs' obligation to provide UNE combinations. In its upcoming order, the Commission also should reject the imposition of "glue charges" and reaffirm its *Local Competition First Report and Order* decision barring restrictions on the use of UNEs – individually or in combination.[136]

G. The Commission Should Define an IntraMTE Wiring UNE

Commenters from all sides of the competitive community demonstrated the need for prompt Commission action to resolve difficulties associated with gaining access to ILEC-owned intraMTE wiring.[137] AT&T identified difficulties in gaining access to the

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134 *AT&T*, 119 S.Ct. at 737.

135 *FNPRM*, ¶ 2.

136 ALTS Comments at 67-69; *see also, e.g.*, e.spire/Intermedia Comments at 13-18; but see Ameritech Comments at 65-66.

137 *E.g.*, Teligent Comments at 3-4; WinStar Comments at 11; e.spire/Intermedia Comments at 27; MGC Comments at 19-20, 28-29; Nextlink Comments at 35-37, 45-47; RCN Comments at 21-22, Choice One/Network Plus/GST/CTSI/Hyperion

customer side of the NID and to ILEC-owned riser cable, and argued that the Commission should ensure that access to both are required with NID and loop unbundling.[138] ALTS was joined by Teligent, WinStar and many other facilities-based competitors in demonstrating the need for definition of an independent intraMTE wiring UNE.[139]

Notably, GTE disagrees with ALTS' showing that intraMTE wiring meets the Section 251(d)(2) unbundling standards. Attempting to maintain yet another roadblock to facilities-based competition, GTE asserts that inside wiring is not a network element, and therefore cannot be subject to an unbundling obligation.[140] ALTS disagrees – the ILEC-owned network obviously includes all facilities they own and use to provide telecommunications services to end users. Moreover, the market for telephone inside wiring installation and maintenance is not, as GTE contends, robustly competitive. There

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Comments at 25-27; AT&T Comments at 82-85; CompTel Comments at 35-36. In the agenda meeting held today, June 10, 1999, the Commission discussed and recognized in the context of the Competitive Networks item that CLEC access to intra-building wiring is a critical issue influencing the development of local competition. *See Promotion of Competitive Networks in Local Telecommunications Markets; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; and Cellular Telecommunications Industry Association Petition for Rule Making and Amendment of the Commission's Rules to Preempt State and Local Imposition of Discriminatory and/or Excessive Taxes and Assessments*, CC Docket No. 96-98. The Commission also sought and has received comments on this issue in the instant proceeding. ALTS appreciates the Commission's recognition of the problem and its willingness to bring attention and resolution to the issue. Given the critical nature of CLEC access to intra-building wiring and the likelihood that the instant proceeding will achieve resolution quickly, ALTS strongly urges the Commission to consider the issue of intra-building wiring as a UNE in the instant proceeding.

138 AT&T Comments at 82-85; *see also, e.g.,* CompTel Comments at 35-36.

139 ALTS Comments at 70-72; Teligent Comments at 3-4; WinStar Comments at 12.

simply are no reasonable substitutes for ubiquitous ILEC-owned inside wire facilities. Building access complications alone compel unbundling, under the Section 251(d)(2) "impair" standard, of ILEC-owned intraMTE wiring.

H. Definition of a Multiplexers/Aggregation/Routing UNE Is Essential to the Effective Use of UNE Combinations

The comments filed by members of the competitive community demonstrated substantial support for Commission action to ensure that multiplexing, aggregation and routing functionalities, essential for the interconnection and combination of network elements, are made available by ILECs as UNEs.[141] Some commenters, like AT&T and CompTel, asked the Commission to include multiplexing in its loop and transport definitions.[142] Others, like KMC and Cable & Wireless, requested definition of a separate UNE. As ALTS demonstrated in its initial comments, a multiplexing/aggregation/routing UNE meets the Section 251(d)(2) "impair" standard.[143] Moreover, ALTS also demonstrated that Commission action is necessary to eliminate disputes over access and pricing that have marred many interconnection negotiations between ILECs and CLECs.[144] Thus, to ensure new entrants access to UNE combinations and to critical network functionalities at TELRIC-based rates, ALTS urges

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140 GTE Comments at 89-90.

141 *E.g.*, AT&T Comments at 85; Cable & Wireless Comments at 35; CompTel Comments at 32; KMC Comments at 26-27; Level 3 Comments at 22 (DSLAM); Network Access Solutions Comments at 37-38 (DSLAM); NorthPoint Comments at 18-19 (DSLAM); Choice One/Network Plus/GST/CTSI/Hyperion Comments at 26 (DSLAM).

142 AT&T Comments at 85; CompTel Comments at 32.

143 ALTS Comments at 76-77.

144 *Id.* at 76.

the Commission to require ILECs to make available a multiplexing/aggregation/routing UNE.

I. Advanced Services (including xDSL, ATM and Frame Relay) Unbundling Should Be Required Because the Advantages of Incumbency Are Not Limited to POTS

As ALTS and other parties have discussed at length, the Communications Act has established UNEs as one of the primary methods of achieving competitive entry into local services markets. The record in this proceeding demonstrates that this method of entry is as important for advanced services – in particular, high capacity data services provided over Digital Subscriber Line, Asynchronous Transfer Mode, Internet Protocol and Frame Relay technologies – as it is for traditional circuit-switched "plain old telephone service." Indeed, the Commission has already found that "Congress made clear that the 1996 Act is technologically neutral and is designed to ensure competition in all telecommunications markets."[145] This finding compels the conclusion that the unbundling requirements of the Communications Act must extend to UNEs necessary for the provision of advanced data services.[146]

The ILEC arguments that "too much unbundling" will provide a disincentive for carriers to deploy their own facilities-based advanced service networks simply does not reflect reality. The largest Frame Relay networks in the country are deployed by competitive carriers, including Intermedia, e.spire, MCI WorldCom and AT&T. Some of the largest long-haul ATM networks are being deployed by competitive providers as

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145 e.spire/Intermedia Comments at 17, (*citing Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, First Report and Order, ¶11, (rel. Mar. 31, 1999)).

146 e.spire/Intermedia Comments at 13-17 and *passim*.

Metromedia Fiber Networks, Williams, Qwest and Level 3. Indeed, these networks are larger than those operated by ILECs. These carriers, which have spent billions of dollars in deploying these networks, and which are continuing to expand their networks at an aggressive pace, certainly will not curtail their efforts if the Commission requires the establishment of data-capable UNEs.

Moreover, the record in this proceeding demonstrates that advanced services UNEs are a critically important adjunct to – and in some cases substitute for – interconnection, and that absent access to such UNEs, a CLEC's ability to provide competitive advanced services will be impaired. e.spire and Intermedia, in their initial joint comments, explained that interconnection agreements for the interchange of Frame Relay traffic are not available from all Tier 1 ILECs, and that some of the interconnection agreements that do exist are restricted to "local" data services (e.g., Frame Relay transmissions that originate and terminate within an exchange as defined by the ILEC's tariff for circuit-switched voice services).[147] In these cases, there is only one way for CLECs to transport a Frame Relay transmission from an originating party on the CLEC network to a terminating party on the ILEC network – to buy ILEC tariffed Frame Relay service at tariffed rates. Such an outcome denies CLECs the alternative methods for competitive entry expressly promulgated in the Communications Act, and profoundly impairs a CLEC's ability to provide competitive advanced services.

In fact, the ILECs' control of loops and critical aggregation points that provide access to the loops is identical for POTS and advanced services. The solution to promoting competitive entry in the technology-neutral manner dictated by the Act is also

147 *Id.* at 29.

identical – the Commission must identify data UNEs necessary to allow transport of DSL, Frame Relay, IP and ATM traffic between a CLEC's data switch and an end user located on an ILEC network. As e.spire and Intermedia discuss in their comments, the nomenclature for the different elements may differ among these various technologies, but the functions remain the same: ILECs must unbundle the ports on their data switches, and the connectivity between the ports.[148]

148 *Id.* at 31.

Conclusion

For all the foregoing reasons, the Commission should act promptly to reinstate minimum national unbundling requirements based on an interpretation of the Section 252(d)(2) "necessary" and "impair" standards that will promote the 1996 Act's goal of widespread facilities-based competition.

Respectfully submitted,

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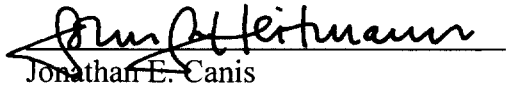
By: 
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CERTIFICATE OF SERVICE

I, John Heitmann, hereby certify that copies of the foregoing Reply Comments of the Association for Local Telecommunications Services were served on June 10, 1999 by messenger on the following persons.

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